IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.678 OF 1992

Revrend Father Agnelo Gracies ..Petitioner.
Vs.
The Regional Provident Fund Commissioner
for Maharashtra& Goa at Bombay ..Respondent.

....

Mr. P. Ramaswamy, Senior Advocate with Gloria L. Crasto for the petitioner.

Mr. H.V. Mehta for the respondent.

....

CORAM : S. RADHAKRISHNAN &
DR.D.Y.CHANDRACHUD, JJ.

25th November, 2004.

JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.)

I

1. St. Pius College is a religious seminary of the faithful of Christ at Mumbai. The seminary has been registered on 7th December, 1988 as a religious charitable trust under the Bombay Public Trust Act, 1950. The Court has been moved under Article 226 of the Constitution by the Rector of the seminary. The challenge in these proceedings is to an order passed on 4th November, 1991, a demand notice dated 23rd January, 1992 and to

a communication dated 10th March, 1992 issued by the Regional Provident Fund Commissioner for the States of Maharashtra and Goa. In proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Regional Provident Fund Commissioner has issued a determination of an amount due and payable by the seminary as contribution on account of the Priests rendering services in the seminary under the provisions of the Act, the Employees' Provident Fund Scheme 1952, the Employees' Family Pension Scheme 1971 and the Employees' Deposit Linked Insurance Scheme, 1976. For the reasons which we now propose to set out, we have come to the conclusion that the demand made by the authorities under the Act upon the petitioner in so far as the Priests at the seminary are concerned, must be quashed and set aside. We hold so on the ground that there is no relationship of an employer and employee between the seminary and the Priests who render their services in providing religious instruction to the students being trained at the seminary. In absence of that relationship, the demand under the provisions of the Act and the schemes framed thereunder, must fail. We, however, clarify that our decision is confined only to the question which arises before the Court in relation to the services of

the Priests engaged at the seminary. The seminary, the Court is informed, engages other ministerial employees attending to sweeping, cleaning and kitchen work in respect of whom payment of contribution under the provisions of the Act has been effected. This judgment will not govern the cases of those other employees in respect of whom there has been compliance with the provisions of the Act and the limited issue which falls for consideration is whether the Priests at the seminary can be brought within the scope and purview of the Act.

II

2. In proceedings under Section 7A of the Act, the Regional Provident Fund Commissioner by an order dated 4th November, 1991 called upon the petitioner to pay various sums of money amounting in all to Rs.1,93,567.80 under the heads of (i) Provident Fund, (ii) Family Pension Fund; (iii) Deposit Linked Insurance Fund and (iv) Administrative Charges. This was followed by a demand notice dated 23rd January, 1992. The petitioner filed a review application contending that St. Pius College is a seminary established and maintained for a religious purpose in accordance

with the prescriptions of Canon Law. According to the petitioner, the funds of the seminary are specifically appropriated in payment of expenses for the promotion or maintenance of the Roman Catholic Faith and the seminary caters to the needs of the faithful of Christ. Hence, according to the petitioner, the seminary could not be treated as an establishment under Section 1(3)(b) of the Act. The subsistence allowance which was paid to the Priests to offer religious discourse to pupils being trained at the seminary could not, according to the petitioner, be treated as a basic wage under Section 2(b) of the Act. Moreover, it was urged that the seminary which caters to the spiritual needs of the Catholic community is not an employer within the meaning of Section 2(e) and the Priests who are “mystics, monks, sanyasis or fakirs” could not be regarded as employees within the meaning of Section 2(f). In an order dated 10th March, 1992, the Regional Provident Fund Commissioner came to the conclusion that the seminary falls within the definition of an 'educational institution' in which training activities are carried out in a systematic manner. Hence, the application filed by the petitioner for review of the order under Section 7A was rejected.

III

3. Section 1(3) of the Act stipulates that the Act applies (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. Clause (a) of sub section (3) is not attracted since the seminary is not a factory. The expression “factory” is defined by Section 2(g) to mean any premises, in any part of which a manufacturing process is carried on or is ordinarily so carried on, with or without the aid of power. Imparting spiritual training is not a manufacturing process nor indeed is it suggested before the Court that the legislature with its wide control over creating deeming fictions sought to impart the character of a factory to a seminary. The question, therefore, before the Court is whether St. Pius College is “any other establishment employing twenty or more persons” under a notification issued by the Central Government.

4. Section 1(3), it must be noted, postulates both in clauses (a) and (b) the existence of an establishment in which twenty or more

persons are employed. The expression “employer” is defined by Section 2(e) to mean in relation to a factory, the owner or occupier or a manager named under Section 7 of the Factories Act 1948 and in relation to any other establishment the authority which has ultimate control over the affairs of the establishment. Clause (f) of Section (2) defines the expression “employee” to mean a person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. The definition of the expression “employee” includes a person employed by or through a contractor in or in connection with the work of the establishment as well as a person engaged as an apprentice otherwise than under Apprentices, Act 1961. We are not concerned in this case with an employee engaged on contract, save and except to take due note that by the definition under Section 2(f) even contract employees are brought within the purview of the definition, so long as such employees are engaged in or in connection with the work of the establishment. The existence of the relationship of employment is, however, a pre condition for the application of the provisions of the Act. In the case of a contract employee, that relationship exists between the

contractor and the employees who are engaged in or in connection with the work of the establishment of the employer.

5. The Central Government has issued a notification on 19th February, 1982 in exercise of powers conferred by Section 1(3)(b) of the Act specifying the following classes of establishments in each of which twenty or more persons are employed, as establishments to which the Act shall apply viz. (i) any University; (ii) any college, whether or not affiliated to a University; (iii) any school, whether or not recognized or aided by the Central or State Government; (iv) any scientific institution; (v) any institution, in which research in respect of any matter is carried on; and (vi) any other institution in which the activity of imparting knowledge or training is systematically carried on.

IV

6. Counsel for the respondent asserts that the seminary in the present case is an institution in which the activity of imparting knowledge or training is systematically carried on and is, therefore, an establishment to which the Act would apply. Though in the petition before the Court, an effort has been made to plead that the Act would not apply to a seminary at all, in the affidavit in reply that

has been filed on behalf of the respondent by the Enforcement Officer, it has been stated that the petitioner has started complying with the provisions of the Act in regard to the payment of contribution in respect of ministerial employees attending to sweeping, cleaning and kitchen work. In this view of the matter, we have indicated to counsel for the petitioner that it would not be appropriate for the Court to decide in the course of proceedings under Article 226, upon issues of a wider nature than what would strictly be necessary for the decision of the case. In fairness, in the course of the submissions, counsel for the petitioner has confined himself to the question as to whether the Priests who render services at the seminary would fall within the purview of the provisions of the Act.

V

7. The Code of Canon Law provides for the establishment and maintenance of seminaries. Canons 232, 234, 235, 238 and 239 are significant, in that they convey the object and purpose behind the establishment of seminaries. These canons are incorporated in title III of the Code which is entitled “Sacred Ministers or Clerics”. They are as follows :

Can. 232 : It is the duty and the proper and exclusive right of the Church to train those who are deputed to sacred ministries.

Can.234 : Minor seminaries and other institutions of a similar nature promote vocations by providing a special religious formation, allied to human and scientific education; where they exist, they are to be retained and fostered. Indeed, where the diocesan Bishop considers it expedient, he is to provide for the establishment of a minor seminary or similar institution.

Can.235: Young men who intend to become priests are to receive the appropriate religious formation and instruction in the duties proper to the priesthood in a major seminary, for the whole of the time of formation or, if in the judgement of the diocesan Bishop circumstances require it, for at least four years.

Can.238 : 1 Seminaries which are lawfully established have juridical personality in the Church by virtue of the law itself.
2 In the conduct of all its affairs, the rector acts in the person of the seminary, unless for certain matters the competent authority has prescribed otherwise.

Can.239 : 1 In all seminaries there is to be a rector who presides over it, a vice-rector, if circumstances warrant this, and a financial administrator. Moreover, if the students follow their studies in the seminary, there are to be professors who teach the various subjects in a manner suitably coordinated between them.

2 In every seminary there is to be at least one spiritual director, though the students are also free to approach other priests who have been deputed to this work by the Bishop.

3 The seminary statutes are to determine the manner in which the other moderators, the professors and indeed the students themselves, are to participate in the rector's

responsibility, especially in regard to the maintenance of discipline.

Canons 245, 246 and 252 deal with the activities at a seminary and it would be relevant to extract those provisions :

Can.245 : 1 Through their spiritual formation students are to be fitted for the fruitful exercise of the pastoral ministry, and are to be inculcated with a sense of mission. They are to learn that a ministry which is always exercised with lively faith and charity contributes effectively to their personal sanctification. They are to learn to cultivate those virtues which are highly valued in human relationships, in such a way that they can arrive at an appropriate harmony between human and supernatural values.

2 Students are to be so trained that, filled with love for Christ's Church, they are linked to the Roman Pontiff, the successor of Peter, in humble and filial charity, to their own Bishop as his faithful co-workers, and to their brethren in friendly cooperation. Through the common life in the seminary, and by developing relationships of friendship and of association with others, they are to be prepared for the fraternal unity of the diocesan *presbyterium*, in whose service of the Church they will share.

Can.246 : 1 The celebration of the Eucharist is to be the centre of the whole life of the seminary, so that the students, participating in the very charity of the Christ, may daily draw strength of soul for their apostolic labour and for their spiritual life particularly from this richest of sources.

2 They are to be formed in the celebration of the liturgy of the hours, by which the ministers of God, in the name of the Church, intercede with Him for all the people entrusted to them, and indeed for the whole world.

3 Devotion to the Blessed Virgin Mary, including the rosary, mental prayer and other exercises of piety are to be fostered, so that the students may acquire the spirit of prayer and be strengthened in their vocation.

4 The students are to become accustomed to approach the sacrament of penance frequently. It is recommended that each should have a director of his spiritual life, freely chosen, to whom he can trustfully reveal his conscience.

5 Each year the students are to make a spiritual retreat.

Can.252 : 1 Theological formation, given in the light of faith and under the guidance of the *magisterium*, is to be imparted in such a way that the students learn the whole of catholic teaching , based on divine Revelation, that they make it a nourishment of their own spiritual lives, and that in the exercise of the ministry they may be able properly to proclaim and defend it.

2 Students are to be instructed with special care in sacred Scripture, so that they may acquire an insight into the whole of sacred Scripture.

3 Lectures are to be given in dogmatic theology, based always on the written word of God and on sacred Tradition; through them the students are to learn to penetrate more deeply into the mysteries of salvation, with St. Thomas in particular as their teacher. Lectures are also to be given in moral and pastoral theology, canon law, liturgy, ecclesiastical history, and other auxiliary and special disciplines, in accordance with the provisions of the Charter on Priestly Formation.

8. The obligations and rights of Clerics are provided in Chapter III of Title III. Under Canon 273 Clerics have a special obligation

to show reverence and obedience to the Supreme Pontiff and to their own Ordinary. Canon 276 sums up the essence of the obligation of a Cleric in the following words :

> Can.276 : 1 Clerics have a special obligation to seek holiness in their lives, because they are consecrated to God by a new title through the reception of orders, and are stewards of the mysteries of God in the service of His people.
>
> 2 In order that they can pursue this perfection:
> 1 they are in the first place faithfully and untiringly to fulfill the obligations of their pastoral ministry;
>
> 2 they are to nourish their spiritual life at the twofold table of the sacred Scripture and the Eucharist; priests are therefore earnestly invited to offer the eucharistic Sacrifice daily, and deacons to participate daily in the offering;
>
> 3 priests, and deacons aspiring to the priesthood, are obliged to carry out the liturgy of the hours daily, in accordance with their own approved liturgical books, permanent deacons are to recite that part of it determined by the Episcopal Conference;
>
> 4 they are also obliged to make spiritual retreats, in accordance with the provision of particular law;
>
> 5 they are exhorted to engage regularly in mental prayer, to approach the sacrament of penance frequently, to honour the Virgin Mother of God with particular veneration, and to use other general and special means to holiness.

9. Canon 277 obliges every Cleric to maintain celibacy. In Canon 281 provision has been made in regard to the remuneration of a teaching Cleric.

> Can.281 : 1 Since clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place. It is to be such that it provides for the necessities of their life and for the just remuneration of those whose services they need.
>
> 2 Suitable provisions is likewise to be made for such social welfare as they may need in infirmity, sickness or old age.
>
> 3 Married deacons who dedicate themselves full-time to the ecclesiastical ministry deserve remuneration sufficient to provide for themselves and their families. Those, however, who receive a remuneration by reason of a secular profession which they exercise or exercised, are to see to their own and to their families' needs from that income.

10. Clerics are under a mandate to adopt a simple way of life, to forsake worldly possession, to wear ecclesiastical dress, to desist a share in civil power and not to practice commerce or trade. Canons 282, 284, 285 and 286 are thus :

> Can.282 : 1 Clerics are to follow a simple way of life and avoid anything which smacks of worldliness.
>
> 2 Goods which they receive on the occasion of the exercise of an ecclesiastical office, and which are over and above what is necessary for their worthy upkeep and the fulfilment of all the duties of their state, they may well wish to use for the good of the Church and for charitable works.
>
> Can. 284 : Clerics are to wear suitable ecclesiastical dress, in

accordance with the norms established by the Episcopal Conference and legitimate local custom.

Can.285 : 1 Clerics are to shun completely everything that is unbecoming to their state, in accordance with the provisions of particular law.

2 Clerics are to avoid whatever is foreign to their state, even when it is not unseemly.

3 Clerics are forbidden to assume public office whenever it means sharing in the exercise of civil power.

4 Without the permission of their Ordinary, they may not undertake the administration of goods belonging to lay people, or secular offices which involve the obligation to render an account. They are forbidden to act as surety, even concerning their own goods, without consulting their proper Ordinary. They are not to sign promissory notes which involve the payment of money but do not state the reasons for the payment.

Can. 286 : Clerics are forbidden to practice commerce or trade, either personally or through another, for their own or another's benefit, except with the permission of the lawful ecclesiastical authority.

11. Annexed to the petition is a list of fifteen Priests attached to St. Pius College. The list shows that these Priests had rendered on the date of the Petition between 16 and 30 years' of service to the community comprising of the faithful of Christ. The twelve years that have elapsed since the institution of the petition must be added to their experience in spirituality. Each of the Priests is

paid a subsistence allowance ranging between Rs.400/- and Rs.600/- per month. The subsistence allowance, as the Canon Law postulates, is a small remuneration that would enable each Priest to meet the bare necessities of life. The essential requirements of the Priests attached to the seminary are met by the Church. The Priests are to have no worldly possession. The allowance which is paid to them is termed as a subsistence allowance since it enables them to meet the bare minimum requirements of a life that is shorn of material comfort.

12. These provisions of the Code of Canon Law indicate the absence of a relationship of employment between the seminary and the Priests. The Priests are not employees nor is there a relationship of employment. The seminary is, in our view, justified in submitting that Clerics who teach at St. Pius College and whose lives are dedicated to imparting religious discourses are individuals expected to lead lives founded on the ecclesiastical mandates of holiness and celibacy, with no attachment to material comfort. The Clerics have no families of their own in the conventional sense. Their religion mandates that humanity is their family. There is no contract of employment between the teaching

Priests and the seminary. They are paid no wages, basic or otherwise. Since the Priests dedicate themselves to the ecclesiastical ministry, they are paid an allowance that befits their condition, taking into account the nature of office and the conditions of time and place. This subsistence allowance enables them to provide for the bare necessities of life and for the just remuneration of services which they may need. The seminary has stated before the Court that it has no control over the body, mind or thought of these Priests nor is it entitled to give direction to a Priest in any manner in regard to the discharge of his functions. According to the seminary, these Clerics " having been unbound from all threads of life are free birds and can fly anywhere and everywhere, where human service is of a paramount requirement and/or call of the day". Control and direction which an employer possesses and which, in a conventional sense, is the prerogative of the employer, is therefore absent in the case of Priests who render religious discourse at the seminary. They are not employees and do not meet the requirement of employment for for the purposes of the Act.

13. In this view of the matter, we have come to the conclusion

that the Priests at St. Pius College, cannot be regarded as being employed in or in connection with the work of the seminary. We are of the view that the proceedings which were adopted by the respondent under the provisions of the Act must fail. We, therefore, in the circumstances, allow the petition and quash and set aside the order dated 4th November, 1991, the demand notice dated 23rd January, 1992 and the order of the respondent dated 10th March, 1992. While allowing the petition, we, however, clarify that this decision is confined to the applicability of the provisions of the Act to the Priests at St. Pius College. Our order does not deal with any of the ministerial employees in respect of whom the petitioner has made contributions under the provisions of the Act and the schemes framed thereunder. Nor, for that matter should we be regarded as having laid down any principal wider than that which is necessary for the decision of the case. The Petition is allowed to the aforesaid extent. In the facts and circumstances, there shall be no order as to costs.

S. RADHAKRISHNAN, J.

DR.D.Y.CHANDRACHUD,

J.